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C O N F I D E N T I A L SECTION 01 OF 03 BANGKOK 002092

SIPDIS

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TAGS: PGOV PHUM KDEM KJUS TH

SUBJECT: THAKSIN SHINAWATRA'S LEGAL TEAM PESSIMISTIC ABOUT CASES IN PROCESS

REF: A. BANGKOK 189 (SUCCESSFUL PROSECUTION UNLIKELY)  
1B. 07 BANGKOK 3530 (THAKSIN TO FIGHT EXTRADITION)  
1C. 07 BANGKOK 1492 (THAKSIN BIDING HIS TIME)  
1D. 06 BANGKOK 7594 (SCRAMBLING TO BUILD CASE)  
1E. 06 BANGKOK 2425 (IT'S A MESS)

Classified By: Ambassador Eric G. John, reason: 1.4 (b) and (d).

SUMMARY

11. (C) Former Prime Minister Thaksin Shinawatra and his wife are now on trial for alleged abuse of power in connection with a 2003 purchase of a plot of land from a state-affiliated institution. This trial may conclude as early as September. Thaksin's wife also appears likely to be convicted in an ongoing trial for tax evasion. A recent Constitutional Court ruling struck down a challenge against the Asset Examination Committee (AEC), the body investigating Thaksin-era corruption. The AEC's term has ended and the National Counter Corruption Commission (NCCC) is taking up its work. A lawyer working for Thaksin discussed these developments with us and complained of widespread judicial bias against Thaksin, which manifested itself in, among other instances, the entrapment and imprisonment of members of Thaksin's legal team when they tried to provide court officials with a payoff. The judiciary may prove capable of marginalizing Thaksin, but risks a perception that the courts are increasingly politicized. End Summary.

"ABUSE OF POWER" TRIAL BEGINS, TAX TRIAL NEARS END

12. (U) On July 8, the Supreme Court's Criminal Division for Political Office Holders began the trial of former Prime Minister Thaksin Shinawatra and his wife, Potjaman, for abuse of power. The charge stems from Potjaman's 2003 purchase of land from the Financial Institutions Development Fund (FIDF). (Ref A provides further background on this case.) Neither Thaksin nor Potjaman attended the July 8 court session.

13. (U) Meanwhile, a criminal court is poised to conclude an ongoing trial in which Potjaman stands accused of tax evasion relating to transfers of corporate shares between herself and her step-brother, Bannapot Damapong, in 1997. (Ref D provides further background on this case.) Both prosecutors and the defense are preparing their closing statements, and the verdict is due to be delivered on July 31.

¶4. (C) Manida "Micky" Zimmerman, a partner with the U.S. law firm Hunton and Williams who also works in an individual capacity on Shinawatra family legal affairs, told Deputy Political Counselor on July 7 that the Shinawatra legal team fully expected that Potjaman would be convicted in the tax evasion case. The team expected she would remain free on bail, however, and appeals would continue for years.

¶5. (C) Micky worried that the Supreme Court would rush forward to conclude the abuse of power case by the end of September. She explained that the current panel of Justices in this case would be subject to a reshuffle on/about October 1, as some members faced mandatory retirement. Micky assessed the current panel as strongly biased against the Shinawatras and believed they would move to deliver a guilty verdict in advance of the reshuffle. (The panel has scheduled three sessions between August 26 and September 2 for a final phase of cross-examination in this case; Supreme Court staff have told us that verdicts are typically delivered approximately 45 days after cross-examination ends.)

CONSTITUTIONAL COURT SAVES AEC; NCCC ASSUMES CASES

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¶6. (U) Several other important cases against Thaksin and his associates will soon be considered by the Supreme Court's Criminal Division for Political Office Holders. These cases include:

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- Allegations that the Thaksin administration acted illegally in establishing a government lottery program;
- Allegations of corruption in the procurement of rubber saplings; and
- Allegations of damages to the state caused by provisions of Export-Import Bank of Thailand loans to Burma, a substantial portion of the total having been designated for telecommunications projects involving the Shinawatra family conglomerate.

¶7. (U) The aforementioned cases, among others, were investigated by the Asset Examination Committee (AEC), which was established after the 2006 coup d'etat in order to document Thaksin-era corruption. The AEC had sought to file the three cases in para six directly with the Supreme Court, bypassing the Office of the Attorney General, but the Court declined to process the AEC's request pending a Constitutional Court ruling on the constitutionality of the AEC's actions. A June 30 ruling by the Constitutional Court determined the AEC has acted in accordance with its authority. It is not yet clear when the aforementioned cases might move to trial, if accepted by the Supreme Court. The AEC's term ended on June 30, and its incomplete tasks have been passed over to the National Counter Corruption Commission (NCCC).

¶8. (C) Shinawatra lawyer Micky Zimmerman told us on July 8 that she had been surprised by the unusual speed with which the Constitutional Court handed down its ruling affirming the constitutionality of the AEC's activities. She interpreted the quick judgment as indicative of a widely rumored Constitutional Court bias against Thaksin.

THAKSIN'S FROZEN FUNDS

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¶9. (C) Liquid assets totaling approximately 2 billion USD belonging to Thaksin and his family were frozen by a June 2007 AEC order. With the AEC now dissolved, Micky told us that the National Counter Corruption Commission (NCCC) appeared to be the proper body to receive Thaksin's request

for the release of these funds. Micky said it appeared clear, however, that the NCCC would not release the bulk of the funds until the courts processed all cases involving allegations that Thaksin had benefited from corruption or caused the state to incur financial losses. The AEC, prior to its dissolution, had approved the release of 100 million Baht (approximately 3 million USD) for Thaksin's legal expenses, however. Thaksin's team was also trying to obtain a written opinion from the Attorney General's Office to support a request for the release of funds that Thaksin could document having obtained prior to becoming Prime Minister.

THAKSIN SIDE ADMITS BRIBE, COMPLAINS ENTRAPPED

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¶10. (C) Micky also discussed the June 25 verdict against three members of Thaksin's legal team -- lead lawyer Pichit Chuenban, team coordinator Thana Tansiri, and legal assistant Supasri Srisawat. All three received six month jail sentences after being found by the Supreme Court to be guilty of contempt of court following a June 10 incident in which Thana provided a court official with a snack box containing 2 million Baht (approximately 60,000 USD).

¶11. (C) Although the three members of the legal team have denied involvement or claimed inadvertent delivery of the snack box, Micky admitted to us that the lawyers involved in the incident had provided the money as a payoff to court officials. She complained, however, that they had done so at the request of a court official, who appeared to be part of a scheme to entrap the team. Micky said this payoff appeared so clumsy that she and others had wondered whether Pichit and/or Thana had decided deliberately to betray Thaksin and might point the finger at him. She asserted that Thaksin had known nothing of the payoff, and that a mere 2 million Baht expenditure in the course of his defense did not require

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Thaksin's approval.

¶12. (C) Micky considered the "entrapping" of these members of the legal team to be part of a wider offensive against Thaksin and his allies. She also said:

- When the Thaksin team filed a lawsuit against the Director General of the Revenue Department for collaborating with the AEC, the pro-Thaksin lawyer associated with the lawsuit documents was subjected to a Revenue Department audit.

- Thaksin's team was surprised by a recent decision, made public on July 3, in which the Supreme Court denied permission for Thaksin to travel abroad. The Supreme Court cited the ongoing "abuse of power" trial proceedings. Micky claimed Thaksin's team members viewed this denial of permission as unusual and unwarranted, and they may file for reconsideration.

- Roughly one-third of the 80-90 active Supreme Court Justices were biased against Thaksin, while the remainder were either sympathetic or neutral.

- All members of the National Counter Corruption Commission (NCCC) -- which has now taken on the role previously played by the AEC -- were biased against Thaksin. (Comment: The current NCCC Commissioners were appointed on September 22, 2006, by the leaders of the 2006 coup d'etat; it is not irrational to presume, therefore, that they are generally predisposed against Thaksin. End Comment.) However, she observed that the NCCC, unlike the AEC, had well-established procedures and professional staff members, who might prevent the NCCC Commissioners from acting as aggressively as the AEC's members.

COMMENT

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¶13. (C) In the immediate aftermath of the pro-Thaksin party's victory in the December election, it appeared as though the political climate might preclude effective prosecution of Thaksin (ref A). Now, however, it seems as though Thaksin faces an uphill fight, at least in some cases. The prospect of Thaksin's prosecution may reassure his opponents, who might otherwise confront Thaksin's allies (the current government) through street action. The People's Alliance for Democracy was energized this spring to fight the government's proposal to amend the Constitution, largely because such a move was seen as having the potential to undercut the AEC and the cases it had built.

¶14. (C) The courts may prove capable of marginalizing Thaksin, either by incarcerating him or by tarnishing his reputation beyond repair. It is possible that Thaksin's conviction in one or more cases would represent a straightforward dispensation of justice, as we believe he likely used his authority as Prime Minister to benefit himself and his cronies. However, we also note that there is an increasing perception among Thais that the judiciary has become politicized; this perception has grown ever since a watershed speech in April 2006, in which King Bhumibol called on the judiciary to take action to resolve the ongoing political crisis (ref E). While the courts currently have the requisite level of prestige and credibility to marginalize Thaksin -- a goal that the Army proved incapable of achieving in the 2006-07 period -- the judiciary may also suffer in the long term, as it moves beyond its traditional role and increasingly serves as a decisive instrument for shaping political life.

JOHN